

AMENDED IN SENATE JULY 9, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1121

**Introduced by Assembly Member Atkins
(Coauthors: Assembly Members Garcia and Stone)**

February 22, 2013

An act to amend, *repeal, and add* Sections 1277 and 1278 of the Code of Civil Procedure, and to add Section 103426 to, the Health and Safety Code, relating to gender identity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1121, as amended, Atkins. Gender identity: petition for change of name.

Existing law sets forth the requirements and procedures for proceedings commenced by the filing of a petition for a change of name. Existing law authorizes a court to grant the petition without a hearing if no written objection to the change of name is timely filed and imposes publication requirements with respect to the court hearing of the change of name petition. Existing law also requires that the current legal name of the petitioner be kept confidential by the court under prescribed circumstances.

This bill would provide that ~~if no written objection is timely filed, the order reciting the filing of the petition, the petitioner's name, and the proposed name shall state that the court is required to grant the petition without a hearing~~ *a petition for a change of name is sought to conform the petitioner's name to his or her gender identity, and no timely objection is filed, the court is required to grant the petition*

without a hearing. If a petition for a change of name is sought in order to conform the petitioner's name to his or her gender identity, the The bill would exempt the petition action from a specified publication requirement and would require that the petition and order of the court indicate that the proposed name is confidential. The bill would authorize a court, at the request of the petitioner to, issue an order reciting the name of the petitioner as a result of the court's granting of the petition. The bill would make these provisions operative on July 1, 2014.

Existing law authorizes a person to file a petition with the superior court in any county to seek a judgment recognizing a change of gender whenever that person has undergone clinically appropriate treatment for the purpose of gender transition. Existing law requires that if requested, the judgment include an order that a new birth certificate be prepared to reflect the change of gender and any change of name. Existing law requires that the State Registrar transmit a certified copy of a birth certificate newly established pursuant to these provisions.

This bill would require the State Registrar to issue a new birth certificate without a court order for any person born in the state who has undergone clinically appropriate treatment for the purpose of gender transition and submits to the State Registrar an affidavit of a physician attesting that the person has undergone that treatment, as specified. Upon receipt of the documentation and a prescribed fee, the State Registrar would be required to establish a new birth certificate reflecting the person's sex and name, if applicable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1277 of the Code of Civil Procedure is
2 amended to read:
3 1277. (a) If a proceeding for a change of name is commenced
4 by the filing of a petition, except as provided in subdivisions (b),
5 (c), and (e), the court shall thereupon make an order reciting the
6 filing of the petition, the name of the person by whom it is filed,
7 and the name proposed. The order shall direct all persons interested
8 in the matter to appear before the court at a time and place
9 specified, which shall be not less than six nor more than 12 weeks
10 from the time of making the order, unless the court orders a
11 different time, to show cause why the application for change of

1 name should not be granted. The order shall direct all persons
2 interested in the matter to make known any objection that they
3 may have to the granting of the petition for change of name by
4 filing a written objection, which includes the reasons for the
5 objection, with the court at least two court days before the matter
6 is scheduled to be heard and by appearing in court at the hearing
7 to show cause why the petition for change of name should not be
8 granted. The order shall state that, if no written objection is timely
9 filed, the court ~~shall~~ *may* grant the petition without a hearing.

10 A copy of the order to show cause shall be published pursuant
11 to Section 6064 of the Government Code in a newspaper of general
12 circulation to be designated in the order published in the county.
13 If no newspaper of general circulation is published in the county,
14 a copy of the order to show cause shall be posted by the clerk of
15 the court in three of the most public places in the county in which
16 the court is located, for a like period. Proof shall be made to the
17 satisfaction of the court of this publication or posting, at the time
18 of the hearing of the application.

19 Four weekly publications shall be sufficient publication of the
20 order to show cause. If the order is published in a daily newspaper,
21 publication once a week for four successive weeks shall be
22 sufficient.

23 If a petition has been filed for a minor by a parent and the other
24 parent, if living, does not join in consenting thereto, the petitioner
25 shall cause, not less than 30 days prior to the hearing, to be served
26 notice of the time and place of the hearing or a copy of the order
27 to show cause on the other parent pursuant to Section 413.10,
28 414.10, 415.10, or 415.40. If notice of the hearing cannot
29 reasonably be accomplished pursuant to Section 415.10 or 415.40,
30 the court may order that notice be given in a manner that the court
31 determines is reasonably calculated to give actual notice to the
32 nonconsenting parent. In that case, if the court determines that
33 notice by publication is reasonably calculated to give actual notice
34 to the nonconsenting parent, the court may determine that
35 publication of the order to show cause pursuant to this subdivision
36 is sufficient notice to the nonconsenting parent.

37 (b) (1) If the petition for a change of name alleges a reason or
38 circumstance described in paragraph (2), and the petitioner is a
39 participant in the address confidentiality program created pursuant
40 to Chapter 3.1 (commencing with Section 6205) of Division 7 of

1 Title 1 of the Government Code, the action for a change of name
2 is exempt from the requirement for publication of the order to
3 show cause under subdivision (a), and the petition and the order
4 of the court shall, in lieu of reciting the proposed name, indicate
5 that the proposed name is confidential and will be on file with the
6 Secretary of State pursuant to the provisions of the address
7 confidentiality program.

8 (2) The procedure described in paragraph (1) applies to petitions
9 alleging any of the following reasons or circumstances:

10 (A) To avoid domestic violence, as defined in Section 6211 of
11 the Family Code.

12 (B) To avoid stalking, as defined in Section 646.9 of the Penal
13 Code.

14 (C) The petitioner is, or is filing on behalf of, a victim of sexual
15 assault, as defined in Section 1036.2 of the Evidence Code.

16 ~~(3) If the petition for a change of name is sought in order to~~
17 ~~conform the petitioner's name to his or her gender identity, the~~
18 ~~action for a change of name is exempt from the requirement for~~
19 ~~publication of the order to show cause under subdivision (a), and~~
20 ~~the petition and order of the court shall, in lieu of reciting the~~
21 ~~proposed name, indicate that the proposed name is confidential.~~

22 ~~-(4)~~

23 (3) For any petition under this subdivision, the current legal
24 name of the petitioner shall be kept confidential by the court and
25 shall not be published or posted in the court's calendars, indexes,
26 or register of actions, as required by Article 7 (commencing with
27 Section 69840) of Chapter 5 of Title 8 of the Government Code,
28 or by any means or in any public forum, including a hardcopy or
29 an electronic copy, or any other type of public media or display.

30 ~~-(5)~~

31 (4) (A) A petitioner may request that the court file the petition
32 and any other papers associated with the proceeding under seal.
33 The court may consider the request at the same time as the petition
34 for name change, and may grant the request in any case in which
35 the court finds that all of the following factors apply:

36 ~~-(A)~~

37 (i) There exists an overriding interest that overcomes the right
38 of public access to the record.

39 ~~-(B)~~

40 (ii) The overriding interest supports sealing the record.

1 ~~(C)~~

2 (iii) A substantial probability exists that the overriding interest
3 will be prejudiced if the record is not sealed.

4 ~~(D)~~

5 (iv) The proposed order to seal the records is narrowly tailored.

6 ~~(E)~~

7 (v) No less restrictive means exist to achieve the overriding
8 interest.

9 (B) *On or before January 1, 2010, the Judicial Council shall*
10 *develop rules of court and forms consistent with the requirements*
11 *of this paragraph.*

12 (c) A proceeding for a change of name for a witness participating
13 in the state Witness Protection Program established by Title 7.5
14 (commencing with Section 14020) of Part 4 of the Penal Code
15 who has been approved for the change of name by the program is
16 exempt from the requirement for publication of the order to show
17 cause under subdivision (a).

18 (d) If application for change of name is brought as part of an
19 action under the Uniform Parentage Act (Part 3 (commencing with
20 Section 7600) of Division 12 of the Family Code), whether as part
21 of a petition or cross-complaint or as a separate order to show
22 cause in a pending action thereunder, service of the application
23 shall be made upon all other parties to the action in a like manner
24 as prescribed for the service of a summons, as is set forth in Article
25 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of
26 Part 2. Upon the setting of a hearing on the issue, notice of the
27 hearing shall be given to all parties in the action in a like manner
28 and within the time limits prescribed generally for the type of
29 hearing (whether trial or order to show cause) at which the issue
30 of the change of name is to be decided.

31 (e) If a guardian files a petition to change the name of his or her
32 minor ward pursuant to Section 1276:

33 (1) The guardian shall provide notice of the hearing to any living
34 parent of the minor by personal service at least 30 days prior to
35 the hearing.

36 (2) If either or both parents are deceased or cannot be located,
37 the guardian shall cause, not less than 30 days prior to the hearing,
38 to be served a notice of the time and place of the hearing or a copy
39 of the order to show cause on the child's grandparents, if living,
40 pursuant to Section 413.10, 414.10, 415.10, or 415.40.

1 (f) *This section shall remain in effect only until July 1, 2014,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before July 1, 2014, deletes or extends that date.*

4 SEC. 2. *Section 1277 is added to the Code of Civil Procedure,*
5 *to read:*

6 1277. (a) (1) *If a proceeding for a change of name is*
7 *commenced by the filing of a petition, except as provided in*
8 *subdivisions (b), (c), and (e), the court shall thereupon make an*
9 *order reciting the filing of the petition, the name of the person by*
10 *whom it is filed, and the name proposed. The order shall direct*
11 *all persons interested in the matter to appear before the court at*
12 *a time and place specified, which shall be not less than six nor*
13 *more than 12 weeks from the time of making the order, unless the*
14 *court orders a different time, to show cause why the application*
15 *for change of name should not be granted. The order shall direct*
16 *all persons interested in the matter to make known any objection*
17 *that they may have to the granting of the petition for change of*
18 *name by filing a written objection, which includes the reasons for*
19 *the objection, with the court at least two court days before the*
20 *matter is scheduled to be heard and by appearing in court at the*
21 *hearing to show cause why the petition for change of name should*
22 *not be granted. The order shall state that, if no written objection*
23 *is timely filed, the court may grant the petition without a hearing.*
24 *If the petition seeks to conform the petitioner's name to his or her*
25 *gender identity and no objection is timely filed, the court shall*
26 *grant the petition without a hearing.*

27 (2) *A copy of the order to show cause shall be published*
28 *pursuant to Section 6064 of the Government Code in a newspaper*
29 *of general circulation to be designated in the order published in*
30 *the county. If no newspaper of general circulation is published in*
31 *the county, a copy of the order to show cause shall be posted by*
32 *the clerk of the court in three of the most public places in the county*
33 *in which the court is located, for a like period. Proof shall be made*
34 *to the satisfaction of the court of this publication or posting, at the*
35 *time of the hearing of the application.*

36 (3) *Four weekly publications shall be sufficient publication of*
37 *the order to show cause. If the order is published in a daily*
38 *newspaper, publication once a week for four successive weeks*
39 *shall be sufficient.*

1 (4) *If a petition has been filed for a minor by a parent and the*
2 *other parent, if living, does not join in consenting thereto, the*
3 *petitioner shall cause, not less than 30 days prior to the hearing,*
4 *to be served notice of the time and place of the hearing or a copy*
5 *of the order to show cause on the other parent pursuant to Section*
6 *413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot*
7 *reasonably be accomplished pursuant to Section 415.10 or 415.40,*
8 *the court may order that notice be given in a manner that the court*
9 *determines is reasonably calculated to give actual notice to the*
10 *nonconsenting parent. In that case, if the court determines that*
11 *notice by publication is reasonably calculated to give actual notice*
12 *to the nonconsenting parent, the court may determine that*
13 *publication of the order to show cause pursuant to this subdivision*
14 *is sufficient notice to the nonconsenting parent.*

15 (b) (1) *If the petition for a change of name alleges a reason or*
16 *circumstance described in paragraph (2), and the petitioner is a*
17 *participant in the address confidentiality program created pursuant*
18 *to Chapter 3.1 (commencing with Section 6205) of Division 7 of*
19 *Title 1 of the Government Code, the action for a change of name*
20 *is exempt from the requirement for publication of the order to show*
21 *cause under subdivision (a), and the petition and the order of the*
22 *court shall, in lieu of reciting the proposed name, indicate that the*
23 *proposed name is confidential and will be on file with the Secretary*
24 *of State pursuant to the provisions of the address confidentiality*
25 *program.*

26 (2) *The procedure described in paragraph (1) applies to*
27 *petitions alleging any of the following reasons or circumstances:*

28 (A) *To avoid domestic violence, as defined in Section 6211 of*
29 *the Family Code.*

30 (B) *To avoid stalking, as defined in Section 646.9 of the Penal*
31 *Code.*

32 (C) *The petitioner is, or is filing on behalf of, a victim of sexual*
33 *assault, as defined in Section 1036.2 of the Evidence Code.*

34 (3) *If the petition for a change of name is sought in order to*
35 *conform the petitioner's name to his or her gender identity, the*
36 *action for a change of name is exempt from the requirement for*
37 *publication of the order to show cause under subdivision (a), and,*
38 *at the request of the petitioner, the petition and order of the court*
39 *shall, in lieu of reciting the proposed name, indicate that the*
40 *proposed name is confidential.*

1 (4) For any petition under this subdivision, the current legal
2 name of the petitioner shall be kept confidential by the court and
3 shall not be published or posted in the court's calendars, indexes,
4 or register of actions, as required by Article 7 (commencing with
5 Section 69840) of Chapter 5 of Title 8 of the Government Code,
6 or by any means or in any public forum, including a hardcopy or
7 an electronic copy, or any other type of public media or display.

8 (5) Notwithstanding paragraph (4), the court may, at the request
9 of the petitioner, issue an order reciting the name of the petitioner
10 at the time of the filing of the petition and the new legal name of
11 the petitioner as a result of the court's granting of the petition.

12 (6) A petitioner may request that the court file the petition and
13 any other papers associated with the proceeding under seal. The
14 court may consider the request at the same time as the petition for
15 name change, and may grant the request in any case in which the
16 court finds that all of the following factors apply:

17 (A) There exists an overriding interest that overcomes the right
18 of public access to the record.

19 (B) The overriding interest supports sealing the record.

20 (C) A substantial probability exists that the overriding interest
21 will be prejudiced if the record is not sealed.

22 (D) The proposed order to seal the records is narrowly tailored.

23 (E) No less restrictive means exist to achieve the overriding
24 interest.

25 (c) A proceeding for a change of name for a witness
26 participating in the state Witness Protection Program established
27 by Title 7.5 (commencing with Section 14020) of Part 4 of the
28 Penal Code who has been approved for the change of name by the
29 program is exempt from the requirement for publication of the
30 order to show cause under subdivision (a).

31 (d) If application for change of name is brought as part of an
32 action under the Uniform Parentage Act (Part 3 (commencing
33 with Section 7600) of Division 12 of the Family Code), whether
34 as part of a petition or cross-complaint or as a separate order to
35 show cause in a pending action thereunder, service of the
36 application shall be made upon all other parties to the action in
37 a like manner as prescribed for the service of a summons, as is set
38 forth in Article 3 (commencing with Section 415.10) of Chapter 4
39 of Title 5 of Part 2. Upon the setting of a hearing on the issue,
40 notice of the hearing shall be given to all parties in the action in

1 *a like manner and within the time limits prescribed generally for*
2 *the type of hearing (whether trial or order to show cause) at which*
3 *the issue of the change of name is to be decided.*

4 *(e) If a guardian files a petition to change the name of his or*
5 *her minor ward pursuant to Section 1276:*

6 *(1) The guardian shall provide notice of the hearing to any*
7 *living parent of the minor by personal service at least 30 days*
8 *prior to the hearing.*

9 *(2) If either or both parents are deceased or cannot be located,*
10 *the guardian shall cause, not less than 30 days prior to the hearing,*
11 *to be served a notice of the time and place of the hearing or a copy*
12 *of the order to show cause on the child's grandparents, if living,*
13 *pursuant to Section 413.10, 414.10, 415.10, or 415.40.*

14 *(f) This section shall become operative on July 1, 2014.*

15 ~~SEC. 2.~~

16 *SEC. 3.* Section 1278 of the Code of Civil Procedure is
17 amended to read:

18 1278. (a) Except as provided in subdivisions (c) and (d), the
19 petition or application shall be heard at the time designated by the
20 court, only if objections are filed by ~~a~~ *any* person who can, in those
21 objections, show to the court good reason against the change of
22 name. At the hearing, the court may examine on oath any of the
23 petitioners, remonstrants, or other persons, touching the petition
24 or application, and may make an order changing the name, or
25 dismissing the petition or application, as to the court may seem
26 right and proper.

27 If no objection is filed at least two court days before the date set
28 for hearing, the court ~~shall~~ *may*, without hearing, enter the order
29 that the change of name is granted.

30 (b) If the provisions of subdivision (b) of Section 1277 apply,
31 the court shall not disclose the proposed name unless the court
32 finds by clear and convincing evidence that the allegations of
33 domestic violence, ~~stalking, sexual assault, or gender identity in~~
34 ~~the petition or stalking~~ are false.

35 (c) If the application for a change of name is brought as part of
36 an action under the Uniform Parentage Act (Part 3 (commencing
37 with Section 7600) of Division 12 of the Family Code), the hearing
38 on the issue of the change of name shall be conducted pursuant to
39 statutes and rules of court governing those proceedings, whether
40 the hearing is conducted upon an order to show cause or upon trial.

(d) If the petition for a change of name is filed by a guardian on behalf of a minor ward, the court shall first find that the ward is likely to remain in the guardian's care until the age of majority and that the ward is not likely to be returned to the custody of his or her parents. Upon making those findings, the court shall consider the petition and may grant the petition only if it finds that the proposed name change is in the best interest of the child.

(e) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

SEC. 4. Section 1278 is added to the Code of Civil Procedure, to read:

1278. (a) (1) Except as provided in subdivisions (c) and (d), the petition or application shall be heard at the time designated by the court, only if objections are filed by a person who can, in those objections, show to the court good reason against the change of name. At the hearing, the court may examine on oath any of the petitioners, remonstrants, or other persons touching the petition or application, and may make an order changing the name, or dismissing the petition or application, as to the court may seem right and proper.

(2) If no objection is filed at least two court days before the date set for hearing, the court may, without hearing, enter the order that the change of name is granted. If the petition seeks to conform the petitioner's name to his or her gender identity and no objection is timely filed, the court shall grant the petition without a hearing.

(b) If the provisions of subdivision (b) of Section 1277 apply, the court shall not disclose the proposed name unless the court finds by clear and convincing evidence that the allegations of domestic violence, stalking, sexual assault, or gender identity in the petition are false.

(c) If the application for a change of name is brought as part of an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), the hearing on the issue of the change of name shall be conducted pursuant to statutes and rules of court governing those proceedings, whether the hearing is conducted upon an order to show cause or upon trial.

(d) If the petition for a change of name is filed by a guardian on behalf of a minor ward, the court shall first find that the ward

1 *is likely to remain in the guardian's care until the age of majority*
2 *and that the ward is not likely to be returned to the custody of his*
3 *or her parents. Upon making those findings, the court shall*
4 *consider the petition and may grant the petition only if it finds that*
5 *the proposed name change is in the best interest of the child.*

6 *(e) This section shall become operative on July 1, 2014.*

7 ~~SEC. 3.~~

8 SEC. 5. Section 103426 is added to the Health and Safety Code,
9 to read:

10 103426. The State Registrar shall issue a new birth certificate
11 without a court order for any person born in this state who has
12 undergone clinically appropriate treatment for the purpose of
13 gender transition and submits directly to the State Registrar the
14 documentation described in subdivision (a) of Section 103430.
15 Upon receipt of the documentation and the fee prescribed by
16 Section 103725, the State Registrar shall establish a new birth
17 certificate reflecting the person's correct sex and name, if
18 applicable, pursuant to subdivision (d) of Section 103430 and
19 Sections 103440 and 103445.